UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

IN RE GENWORTH FINANCIAL, INC., SECURITIES LITIGATION	Civ. A. No. 3:14-cv-00682-JAG Hon. John A. Gibney, Jr. **CLASS ACTION**

MEMORANDUM OF LAW IN SUPPORT OF LEAD PLAINTIFFS' MOTION FOR ENTRY OF CLASS DISTRIBUTION ORDER

Lead Plaintiffs Her Majesty the Queen in Right of Alberta ("Alberta") and Fresno County Employees' Retirement Association ("Fresno," and together with Alberta, "Lead Plaintiffs"), by and through their undersigned counsel of record, respectfully submit this Memorandum Of Law In Support Of Lead Plaintiffs' Motion For Entry Of Class Distribution Order. As discussed below, if entered, the proposed Class Distribution Order, submitted with the Motion, will, among other things, approve distribution of the Net Settlement Fund to Authorized Claimants as set forth in the declaration filed on behalf of the claims administrator, the Declaration Of Megan M. Peters In Support Of Lead Plaintiffs' Motion For Approval Of Distribution Plan ("Peters Decl."), attached as Exhibit 1 to the Motion.

I. INTRODUCTION

Having secured final judgment on September 26, 2016, and undertaken a thorough, fair, and expedient claims administration process, Lead Plaintiffs now move the Court for distribution of the Net Settlement Fund to eligible Claimants, as detailed herein and in the accompanying Peters Declaration. By way of background, on April 1, 2016, the parties entered into a Stipulation And Agreement Of Settlement (the "Stipulation") (ECF No. 196-1).[1] Pursuant to the terms of the Stipulation, Defendants paid or caused to be paid $219 million in cash into the Escrow Account, and the funds were invested for the benefit of the Settlement Class. Following reasonable notice of the Settlement to the Settlement Class and a hearing, the Court granted final approval of the Settlement on September 26, 2016. *See* Judgment Approving Class Action Settlement (ECF No. 214).

As of May 22, 2017, following the payment of Court-awarded fees and expenses, the current value of the Net Settlement Fund is $154,348,266.64.

[1] All capitalized terms not defined herein shall have the meaning as set forth in the Stipulation.

In accordance with the Court's April 18, 2016 Amended Order Preliminarily Approving Settlement And Providing For Notice (the "Preliminary Approval Order," ECF No. 201), Epiq Class Action & Claims Solutions, Inc. ("Epiq") was authorized to serve as the Claims Administrator in connection with the Settlement of this Action. As set forth in the Peters Declaration, as Claims Administrator, Epiq has implemented the terms of the Settlement by, among other things: (i) mailing over 100,000 Notice Packets to potential Class Members; (ii) creating and maintaining a toll-free hotline; (iii) creating and maintaining a case-specific website and posting case-specific documents on said website, and updating each accordingly during the course of the administration; (iv) causing the Summary Notice to be published in *The Wall Street Journal* and *Investor's Business Daily* and over the *PR Newswire*; (v) providing, upon request, additional copies of the Notice Packet to brokers and nominees; and (vi) receiving and processing Claim Forms. In response, as set forth in the Peters Declaration and discussed below, the Claims Administrator received and processed 84,859 Claims.

The Stipulation requires Lead Counsel to apply to the Court, on notice to Defendants' Counsel, for a Class Distribution Order, *inter alia*: (a) approving the Claims Administrator's administrative determinations concerning the acceptance and rejection of the Claims submitted; (b) approving payment of any administration fees and expenses associated with the administration of the Settlement from the Escrow Account; and (c) if the Effective Date has occurred, directing payment of the Net Settlement Fund to Authorized Claimants from the Escrow Account. Stipulation ¶32.

The Effective Date – the date by which the Judgment (ECF No. 214) has been entered and the time for appeal has expired – has passed. Accordingly, Lead Counsel now seek, *inter alia*, approval of the distribution of the Net Settlement Fund to Authorized Claimants as determined by Epiq, and approval of the claims administration fees and expenses.

II. SUMMARY OF CLAIMS PROCESSING

As detailed in the Peters Declaration, Epiq sent over 100,000 Notice Packets to potential Settlement Class Members and brokers and nominees, and received 84,859 Claims. Peters Decl. ¶¶3, 4. The majority of the Claims received initially contained deficiencies, *e.g.*, they were initially incomplete, improperly completed, not properly documented, or filed by a Claimant who was not a Class Member. If a Claim was wholly or partially deficient (for example, if the Claim was missing documentation, calculated to no Recognized Claim, or did not include eligible transactions), Epiq mailed or emailed, as applicable, a deficiency notice to the Claimant describing the defect(s) and, if the defect was curable, stating what was necessary to complete the Claim. *Id.* ¶21. The deficiency notices specifically advised the Claimant that the Claimant had the right, within twenty days, to contest the rejection of the Claim and request Court review of the disposition of the Claim. An example of the type of deficiency notice sent to Claimants who submitted paper Claim Forms is attached as Exhibit A to the Peters Declaration.

Epiq carefully reviewed Claimants' responses to deficiency notices and worked with Claimants to resolve deficiencies where possible. *Id.* ¶22. Of the 84,859 Claims that Epiq received, Epiq has determined that 46,516 are acceptable in whole or in part (identified by claim number on Exhibits B-1 and B-2 to the Peters Decl.), and that 38,343 should be wholly rejected.[2]

[2] *Id.* ¶¶34, 37. Among the Claims that are recommended for acceptance are Claims that were electronically submitted by a third-party filer that are provisionally accepted. *Id.* ¶33. Lead Counsel and the Claims Administrator provisionally recommend acceptance pending further confirmation and documentation from the filer. So as not to delay the distribution to other Claimants, the potential award amounts for this submission will be calculated and the distribution

The rejected claims, and the reasons for rejection, are listed at Exhibit B-3 to the Peters Declaration. The most common reasons for rejection of claims were as follows: (i) the Claimant made no purchases of the eligible Genworth Securities during the Settlement Class Period; or (ii) when calculated under the Court-approved Plan of Allocation, the Claim did not result in a Recognized Claim, which typically indicates that the Claimant suffered no loss that is recoverable under the federal securities laws. *See id.* ¶35. As set out in the Peters Declaration, all Claims for which Court review was initially requested have now been resolved; thus there are no Claimants requesting judicial review of Epiq's administrative determinations with respect to their Claims. *Id.* ¶25.

III. LATE BUT OTHERWISE ELIGIBLE CLAIMS

The Preliminary Approval Order contemplates that, as is customary in securities class action settlements, the Court may extend the deadline for Settlement Class Members to submit Claims to be potentially eligible to participate in the settlement recovery. *See* Preliminary Approval Order (ECF No. 201) ¶10 ("Unless the Court orders otherwise, all Claim Forms must be postmarked no later than August 22, 2016. Notwithstanding the foregoing, Lead Counsel may, at their discretion, accept for processing late Claims provided such acceptance does not delay the distribution of the Net Settlement Fund to the Settlement Class.").

The deadline initially set by the Court for submitting Claim Forms was August 22, 2016 (approximately 120 calendar days following the Notice Date). Of the 84,859 Claims received, 27,732 were received after the initial deadline. Epiq processed all late Claims, and determined

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held until the submission can be confirmed. In the event that an issue arises for Court determination, we will bring it to the Court's attention.

that 8,056 of them are otherwise eligible ("Late But Otherwise Eligible Claims"). Epiq has not rejected any Claims solely based on their late submission, and believes that no delay has resulted from the provisional acceptance of the Late But Otherwise Eligible Claims. Peters Decl. ¶27.

However, there must be a final cut-off date after which no more Claims will be accepted so that there may be a proportional distribution of the Net Settlement Fund. The processing and acceptance of any Claims received after preparation of this Motion would necessarily require a delay in the distribution. Accordingly, Lead Plaintiffs respectfully request that the Court order that no Claims received or modified after May 3, 2017 (the date of preparation of the Peters Decl.) be eligible for payment, unless and until payment of Claims of Authorized Claimants becomes no longer economically feasible, as set forth below.

Lead Plaintiffs further request that the Court approve Epiq's administrative determinations accepting Claims (including the Late But Otherwise Eligible Claims) and rejecting Claims as set forth in the Peters Declaration.

IV. DISTRIBUTION OF THE NET SETTLEMENT FUND

Lead Plaintiffs respectfully request that the Court adopt the Distribution Plan for the Net Settlement Fund set forth in paragraph 39 of the Peters Declaration, which would authorize an Initial Distribution of the Net Settlement Fund to the Claimants listed in Exhibit B-1 (Timely Eligible Claims) and Exhibit B-2 (Late But Otherwise Eligible Claims) to the Peters Declaration, after payment of the fees and expenses of the Claims Administrator as discussed below, and payment of any remaining escrow fees, estimated taxes, and tax return preparation fees as authorized by the Stipulation.

In the Initial Distribution, Epiq will determine a Distribution Amount for each Authorized Claimant based on the Authorized Claimant's *pro rata* share of the Net Settlement Fund. *See*

Peters Decl. ¶39. As provided for in the Court-approved Plan of Allocation, Authorized Claimants whose Distribution Amount is less than $10.00 will receive no payment. Authorized Claimants whose Distribution Amount is at least $10.00 will receive their *pro rata* share of the Net Settlement Fund.

After eliminating Claimants who would have received less than $10.00, Authorized Claimants whose Distribution Amount is greater than $10.00 but less than $100.00 will receive their full Distribution Amount ("Claims Paid in Full"), and Authorized Claimants whose Distribution Amount is $100.00 or more will receive 90% of their Distribution Amount, with the remaining 10% of their payments held in reserve (the "Reserve") to address any contingencies that may arise.

V. DISPOSITION OF RESERVE AND ANY UNCLAIMED/UNCASHED BALANCE

To encourage Authorized Claimants to cash their distribution checks promptly and to avoid or reduce future expenses relating to uncashed checks, Lead Plaintiffs propose that the distribution checks bear the notation "DEPOSIT PROMPTLY, VOID AND SUBJECT TO RE-DISTRIBUTION IF NOT CASHED WITHIN 90 DAYS OF ISSUE DATE." In an effort to have as many Authorized Claimants as possible promptly cash their checks, Epiq will follow up with Authorized Claimants who initially fail to cash their distribution checks. *See* Peters Decl. ¶39.

As to the funds that remain in the Net Settlement Fund after the Initial Distribution as a result of uncashed or returned checks, including the Reserve, Epiq will conduct a second distribution (the "Second Distribution"), after deducting Epiq's reasonable fees and expenses incurred in connection with administering the Settlement for which it has not yet been paid, as approved by Lead Counsel (including the estimated fees and expenses of such Second

Distribution), and after the payment of any remaining escrow fees, estimated taxes, and tax return preparation fees. The Second Distribution will be distributed on a *pro rata* basis to Authorized Claimants from the Initial Distribution who (i) were not Claims Paid in Full; (ii) cashed their Initial Distribution check; and (iii) would receive at least $10.00 from such distribution based on their *pro rata* share of the remaining funds. *Id.* If cost effective, subsequent distributions of funds remaining in the Net Settlement Fund will take place in at least six-month intervals. *Id.*

Once it becomes no longer cost effective to re-distribute the settlement funds to Authorized Claimants, any Claims received after May 3, 2017, that are otherwise valid, as well as any earlier received Claims for which an adjustment was made after May 3, 2017, which resulted in an increased Recognized Claim, may be paid their distribution amounts or additional distribution amounts on a *pro rata* basis that would bring them into parity with other Authorized Claimants to the extent possible. *Id.*

If any funds shall remain after payment of such late or late adjusted Claims, the remaining balance of the Net Settlement Fund, after payment of any unpaid fees or expenses incurred in connection with administering the Net Settlement Fund and after the payment of any estimated taxes, the costs of preparing appropriate tax returns, and any escrow fees, shall be contributed to the Virginia Health Care Foundation, a non-sectarian, not-for-profit organization, pursuant to paragraph 18 of the Stipulation and as recommended by the Court.

VI. FEES AND EXPENSES OF THE CLAIMS ADMINISTRATOR

The Stipulation (¶16) and the Court's Preliminary Approval Order (¶21) provide that Lead Counsel may direct payment from the Settlement Fund, without further order of the Court, of all reasonable Notice and Administration Costs actually incurred and paid or payable. Once the Settlement was reached, and following a request-for-proposal process, Lead Counsel retained Epiq based on a per-claim processing fee rate on a sliding scale from $3 to $3.25 per claim, with a maximum fee cap for up to 57,500 claims, exclusive of expenses. In accordance with Epiq's agreement with Lead Counsel to serve as the Claims Administrator, Epiq was responsible for, among other things, mailing the Notice to the Class, publishing the Summary Notice, processing the Claims, and allocating and distributing the Net Settlement Fund to Authorized Claimants.

As reflected in the Peters Declaration, the total amount of Epiq's fees and expenses incurred and expected to be incurred through the Initial Distribution is $586,250.69. Peters Decl. ¶38. To date, Epiq has not received any payment for its fees and expenses in this case, and thus the entire amount is owed. *Id.* Accordingly, the proposed Class Distribution Order submitted herewith contains a provision confirming that payment of such Claims Administration fees and expenses may be made from the Settlement Fund as authorized by the Stipulation and the Court's Preliminary Approval Order.

VII. RELEASE OF CLAIMS

To allow the full and final distribution of the Net Settlement Fund, it is necessary to bar any further claims against the Net Settlement Fund beyond the amount allocated to Claimants as set forth in the Distribution Plan, and to provide that all persons involved in the review, verification, calculation, tabulation, or any other aspect of the processing of the Claims submitted herein, or otherwise involved in the administration or taxation of the Settlement Fund or the Net Settlement Fund, be released and discharged from any and all claims arising out of such involvement. *Cf.* Stip. ¶34 ("No person or entity shall have any claim against Lead Plaintiffs, Lead Counsel, the Claims Administrator or any other agent designated by Lead Counsel, or the Defendants' Releasees and/or their respective counsel, arising from distributions made substantially in accordance with the Stipulation, the plan of allocation approved by the Court, or any order of the Court. Lead Plaintiffs and Defendants, and their respective counsel, and Lead Plaintiffs' damages expert and all other Releasees shall have no liability whatsoever for the investment or distribution of the Settlement Fund or the Net Settlement Fund, the plan of allocation, or the determination, administration, calculation, or payment of any claim or nonperformance of the Claims Administrator, the payment or withholding of taxes (including interest and penalties) owed by the Settlement Fund, or any losses incurred in connection therewith."). Accordingly, Lead Plaintiffs request that the Court release and discharge all persons involved in the review, verification, calculation, tabulation, or any other aspect of the processing of the Proofs of Claim submitted herein, or otherwise involved in the administration or taxation of the Settlement Fund or the Net Settlement Fund, from any and all claims arising out of such involvement, and bar all Settlement Class Members, whether or not they receive payment from the Net Settlement Fund, from making any further claims against the Net Settlement Fund, Lead Plaintiffs, Lead Counsel, Defendants' Releasees and their respective counsel, the Claims Administrator, the Escrow Agent, or any other agent retained by Lead Plaintiffs or Lead Counsel in accordance with the administration or taxation of the Settlement Fund or the Net Settlement Fund beyond the amount allocated pursuant to the Distribution Plan.

VIII. CONCLUSION

For the foregoing reasons, Lead Plaintiffs respectfully request that the Court enter the [Proposed] Class Distribution Order submitted herewith.

Dated: May 30, 2017

Respectfully submitted,

/s/ Susan R. Podolsky

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CERTIFICATE OF SERVICE

I hereby certify that on May 30, 2017, I caused the foregoing to be electronically filed with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the email addresses denoted on the Electronic Mail Notice List.

/s/ Susan R. Podolsky

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